

**PROPERTY ASSESSMENT APPEAL BOARD**  
**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

PAAB Docket No. 2015-008-00046R

Parcel No. 08-8427-32-33-87-082

Phillip L. South,  
Appellant,

v.

Boone County Board of Review,  
Appellee.

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**Introduction**

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on October 28, 2015. Attorney James E. Nervig of Brick Gentry PC, West Des Moines represented Phillip L. South. Boone County Attorney Daniel Kolacia represented the Board of Review.

South is the owner of a residential, one-story, brick dwelling located at 113 East Division Street, Ogden. The dwelling has 1537 total square feet of living area; a full basement with 1144 square feet of low-quality finish; a 658 square-foot attached garage; and a patio constructed in 1963. The dwelling is listed in normal condition and with average construction quality (Grade 4+10). It is situated on a 0.245-acre site. (Exhibit A).

The property's January 1, 2015, assessment was \$132,752, allocated as \$11,025 in land value and \$121,727 in dwelling value. South's protest to the Board of Review claimed the assessment was not equitable as compared with assessments of other like property in the city, that the property was assessed for more than the value authorized by law, and that there was an error in the assessment under Iowa Code sections 441.37(1)(a)(1)(a), (b), and (d). (Ex. E). The Board of reduced the assessment to \$128,622. South then appealed to PAAB.

He now asserts the property's correct value is \$114,706. (Ex. 7). South's only claims on appeal are inequity in the assessment and that the property is over assessed.

### **Findings of Fact**

South asserts his property is both inequitably assessed and over assessed based on his comparison of the increases in assessment of his property and several other residential properties he selected.

South provided the subject property's assessment history from the time he purchased it in 2007 for \$107,500. After he protested the 2008 assessment, value remained at \$107,905 until it was increased in 2015. (Exhibit 6). South also offered evidence and testified regarding the assessment history of other Ogden properties from 2010 to present. South identified three properties, located at 519 West Oak Street, 125 East Division Street, and 314 East Division, that have similar assessment histories. (Exs. 9-11). All of the assessment were increased roughly 10% in 2015, while South's assessment increased roughly 20%. The disproportionate increase appears to result from the removal of the 40% obsolescence on South's property coupled with the across the board increase to residential properties. We note, however, that these properties' ages, total living areas, grades, basement finishes, site sizes, and other attributes differ from South's property. South also conceded they are not comparable to the subject property. Despite their incomparability, South asserts that his 20% increase in the assessment was unreasonable as compared to other properties' increases.

South further testified that he also calculated the average assessed value of land at \$0.80 per-square-foot and reports his land is assessed at \$1.04 per-square-foot. He believes his land should be assessed at the average per-square-foot value.

County Assessor Paul Overton testified that he lowered the quality grade of the subject property from 3 to 4+10 before the assessment in March 2015. Overton reported he also reviewed the sales in Ogden and within the community's map area. He further explained the assessment/sales ratio for Ogden, which required an increase in residential assessments. Comparing the properties' assessments and sale prices produces an assessment/sales ratio. When property values and assessments are

closely aligned, a ratio approaching 100% is achieved. Overton testified residential properties' sales prices began increasing in approximately 2012. This trend resulted in a 2014 ratio of 84.7%. (Exs. 3-5). Overton testified there were approximately 29 sales in Ogden in 2014, which he believes was a reasonable statistical sample size to use for the ratio.

The 2014 ratio indicated a need to increase assessed values in Ogden for the 2015 assessment. Overton testified that a review of 2015 sales was also used as a check on the increased assessment to residential property and produced a 98.2% assessment/sales ratio for all residential property in Ogden. (Ex. 3). The across the board increase in the 2015 residential revaluations achieved a closer alignment between assessments and market values in Ogden. He did not change land values in Ogden because there have not been any vacant land sales; instead the change was made on the improvement side.

Overton further testified that residential sites in this area of Ogden are uniformly valued at \$150 per effective-front-foot, and are not valued on square-foot pricing that South used. South's property has 73.50 effective-front-feet, which results in his \$11,025 value ( $73.50 \times \$150 = \$11,025$ ).

### **Conclusions of Law**

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2015). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. §§ 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted. *Id.* In this

case, South did not shift the burden of proof; it is therefore his burden to prove his claim by a preponderance of the evidence. *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* Conversely, abnormal sales not reflecting market value shall not be taken into account or must be adjusted to eliminate the effect of factors which distort market value, including but not limited to sales to immediate family of the seller, . . . [or] discounted purchase transactions. *Id.*

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 133 N.W.2d 709 (Iowa 1965). The six criteria include evidence showing

“(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination.”

*Id.* at 711. The *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of this actual value. *Id.* The *Maxwell* test may have limited applicability now that current Iowa law requires assessments to be at one hundred percent of market value. § 441.21(1). Nevertheless, in some rare instances, the test may be satisfied.

We find the South has not established inequity in his assessment. To show inequity, the taxpayer must first select comparable properties for analysis. South, rather, attempted to show inequity by comparing the average increase in assessments from 2010 to 2015 of select properties based on their *value*, not their comparability to the subject. Since, the properties South selected were admittedly not comparable to his, the equity claim must fail. Moreover, none of the properties South selected recently sold, and this evidence is likewise insufficient to develop an assessment/sales ratio for equity analysis.

South also contends his site is assessed for more per-square-foot than similar property; however, he did not compare the assessed values based on unit pricing per-effective-front-foot method that was used in the assessments. Overton testified the same unit pricing system was used on all residential properties. For the foregoing reasons, South has failed to show his property is inequitably assessed by a preponderance of the evidence.

In an appeal alleging the property is assessed for more than the value authorized by law, the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). South did not offer any evidence from which PAAB could conclude that the property's assessment is assessed for more than its fair market value, such as a comparable sales analysis, an appraisal, or testimony of a disinterested witness establishing the property's value using recognized methods set for in section 441.21. For these reasons, South's failed to establish the subject property was over-assessed.

## **Order**

IT IS THEREFORE ORDERED that the Boone County Board of Review's action is affirmed.

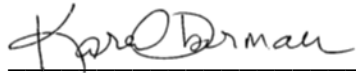
This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of

PAAB administrative rules. Such application will stay the period for filing a judicial review action. Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.

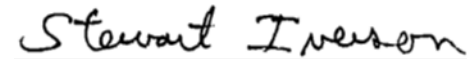
Dated this 4th day of December, 2015.



Jacqueline Rypma, Presiding Officer



Karen Oberman, Board Member



Stewart Iverson, Board Chair

Copies to:

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